227.

SUPREME COURT OF THE UNITED STATES.

No. 75.

DEAN RICHMOND, APPELLANT,

vs.

THE CITY OF MILWAUKEE AND FERDINAND KUEHN.

APPEAL FROM DISTRICT COURT U. S. FOR WISCONSIN.

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231.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
For the District of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a special term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district, on the second Monday (being the tenth day) of November, A. D. 1856.

Present: the honorable Andrew G. Miller, judge of said court, presiding. Stephen V. R. Ableman, marshal. B. K. Miller, clerk.

Among other were the following proceedings, to wit:

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE
and Ferdinand Kuehn.

Be it remembered that heretofore, to wit, on the tenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, came Dean Richmond, by Messrs. Brown & Ogden, his solicitors, and filed in said court his bill of complaint against the city of Milwaukee and Ferdinand Kuehn; which said bill of complaint is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Wisconsin.

To the judge of the district court of the United States for the district of Wisconsin.

Dean Richmond, of the city of Buffalo, in the State of New York, and a citizen of the State of New York, brings this his bill of complaint against the city of Milwaukee, a municipal corporation of the State of Wisconsin, and Ferdinand Kuehn, treasurer of said city, residing in said city, and a citizen of the State of Wisconsin.

And thereupon your orator complains and saith, that he is seized in fee simple of the following real estate in the said city of Milwaukee, in the district of Wisconsin, to wit, lot No. six, in block No. three; lot No. two, in block No. six; lots one, seven, eight, nine, ten, eleven, and twelve, in block No. nine; lot No. six, in block No. ten; lot No. twelve, in block No. thirteen; lot six, in block twenty-one; lots one and twelve, in block No. twenty-three: lots six and seven, in block No. twenty-five; lots two, three, and twelve, in block No. twenty-six; lots Nos. one and six, in block No. twenty-seven; lots Nos. six and seven, in block thirty-one; lot No. nine, in block No. thirty-two, in Milwaukee proper, in the

fifth ward of the city of Milwaukee, and that by virtue of said title he is in possession thereof, although, as he is informed and believes, no one is in the actual occupation thereof, and that said city of Milwaukee sets up a claim thereto.

And your orator further shows that the said city has, by virtue of its charter, the right to levy taxes upon the real estate situate in said city upon certain conditions and under certain restrictions determined by law and the charter thereof, and that when such taxes are legally levied conformably to said charter, and are not paid, the treasurer of said city has the right, upon certain conditions and under certain restrictions, to sell the lots or pieces of land upon which such taxes are so levied at public auction, and give a certificate, upon such sale, to the purchaser, by virtue of which he or his assignee becomes, at the end of three years from such sale, entitled to a deed from such treasurer of the premises so sold and described in such certificate, which said deed vests in the grantee therein named a good, perfect estate, in fee simple, in such property, and divests the estate of the former owner.

And your orator further shows, that on or about the 28th day of May, in the year 1851, the treasurer of said city held in his hands a certain book, which he claims to be a tax list of said fifth ward, made under an act entitled "An act to authorize the assessment and collection of taxes in the city of Milwaukee," approved January 24, 1851, and that upon said book was described, in figures in one column, said lot twelve, in block No. thirteen, and against it a valuation of forty dollars; and in addition to the percentage upon the said valuation levied upon said lots in common with other lots in said ward, there was a charge, under the head of special tax, of seventy dollars and forty cents; and that on the same book were described said lot seven, in block thirty-one, and a valuation thereof at thirty dollars; and said lot nine, in block thirty-two therein, valued at thirty dollars; and in addition to said percentage levied as aforesaid, there was charged against said lot seven, as a special tax, the sum of one hundred and sixty-two dollars and sixty-three cents, and on said lot nine, ninety-seven dollars and twenty-nine cents. And your orator further shows, upon information and belief, that said book was not a legal tax list, and that the preliminary steps necessary to make it so were not taken, and that no evidence thereof remains in the proper offices. And that your orator caused an examination to be made in the offices of the clerk, treasurer, and comptroller of said city, for books, papers, and vouchers, showing the reason and authority upon which said charges, under the name of special tax, were made as aforesaid. And your orator is informed and believes, and so charges the fact to be, that no such books, papers, or vouchers could be found, aside from a certificate of the alderman of said ward, reciting that they had found such a charge in a tax list of eighteen hundred and forty-nine, and referring to a schedule, likewise purporting to be a copy,

for the basis of said special tax, and a resolution by them to levy said amounts on said lots, referring likewise to said schedule. And your orator further charges that said schedule shows that such charges so purporting to be a special tax as aforesaid were not made upon the basis of dividing the costs of constructing or grading or excavating any streets among the lots fronting thereon, according to the respective front of such lots on said streets, but, on the contrary, was levied without regard to such fronts upon an estimate, arbitrarily made, of the probable amount of filling or excavating opposite each lot. And your orator further shows that said tax list of eighteen hundred and forty-nine was illegal and void, and had been so recognized both by the action of the city and by the legislature of the State, and by a decision of the supreme court of said State, and could therefrom form no basis of taxation, or evidence of right, except for the purposes of said special act referred to as aforesaid. And your orator further shows that the said treasurer, so having said book as aforesaid, did, on or about the twenty-eighth day of May, eighteen hundred and fifty-one, offer said lots at auction for the satisfaction of said charges, and of said rate per centum, under the plea that the same were not paid, and that he had a right so to do by virtue of said charter and of said special act, and did bid said lots so described on said books as aforesaid in, in the name of the city, for the sum so set against them respectively as aforesaid, and did issue certificates, in the usual form of certificates in tax sales, to the said city, reciting said sale, and that the holder would be entitled to a deed of said lots respectively, unless the said several amounts for which they were so sold as aforesaid, and interest at twenty-five per cent. per annum, and charges, should be paid by your orator within three years from that date. And your orator further shows that said sale did not take place on the first Monday of May, A. D. eighteen hundred and fifty-one, nor any day to which said sale was adjourned from day to day, but that, subsequently to said first day of May, there was one adjournment of at least two weeks without the authority of law.

And your orator further shows, that on or about the last day of December, A. D. 1852, the then treasurer of said city held in his hands a certain other book, which he claimed to be the tax list of said fifth ward, (there being for that year, as your orator is informed and believes, no one book containing the tax list for the entire city of Milwaukee aforesaid,) in which said book, beside other lots, were described said lots number seven and nine, in block No. nine, and said lot six, in block No. twenty-seven, valued therein at thirty dollars each, and that over and beyond the per centage upon their respective values, charged against them in common with other lots of said ward, there was charged on said book, as a special tax against said lot No. seven, in block No. nine, twelve dollars and seventy-two cents, and against said lot nine, ten dollars and thirty-eight

cents, and against said lot six, seventy-two dollars and thirty cents. And your orator further shows, that he has caused search to be made in the office of the clerk, treasurer, and comptroller of said city, and has discovered that the pretence of said pretended special taxes on lots number nine and seven, in said block No. nine, was for grading Main street, and the pretence for said pretended special tax upon said lot No. six, in said block No. twenty-seven, was for grading Chicago street, but he has been unable to discover either by enquiry of said officers or otherwise, any estimate of the amount of work to be done, or of the cost thereof, as required in case of a real special tax for that purpose by the charter of said city, nor could he find any notice of the order of the street commissioners to do said work, nor any other proceedings required by the charter of said city, in order to make such tax a valid tax, although inquiry was made of the proper officers in that behalf, but did find a contract made on the eighteenth day of August, by the alderman of said ward, with one William Cook, for grading Grove and Marshall street from Oregon to Maine, and Chicago street from Oregon to Maine, and Main street east to Marshall, at eighteen cents per cubic yard, payable as well for filling as for excavating, and to these was added Marshall street from Main to Rail Road street, at twenty cents per cubic yard, at the option of the said alderman, and the whole to be completed by the first day of October, 1852. And your orator charges, upon information and belief, that no proper order to grade said streets was ever made; that no legal or proper notice of such order was ever published, as required by said charter; that no proper proceedings were ever had requisite to make said charges legal charges against said several lots; that no notice was given for bids for said work; that said work was never offered to the lowest bidder; that said contract, by including a number of streets, and imposing upon the lot owners the burthen of the said condition in regard to Marshall street, and by its various other conditions, is in itself invalid to support a special tax under the said charter; that the cost of the work on any one street was not divided among all the lots fronting on such street, that some were charged with the cost of the work contracted to be done, others were not; that said book was not a legal tax list.

And your orator further shows, that said treasurer of said city, after said last day of December, and on or about the fifteenth day of January, A. D. 1853, under pretence of the non-payment of said several charges against said lots, offered at public auction said lots severally, and bid them in the name of said city of Milwaukee, and gave certificates therefor in the usual form of certificates given to purchasers on tax sales legally made.

And your orator further shows, that on or about the last day of December, A. D. 1853, the treasurer (then being) of said city held in his possession a certain other book which he claimed to be a tax list of the fifth ward of the city of Milwaukee for the year 1853,

and in which were described the following lots, part of those lots hereinbefore mentioned, to wit, lots No. one, seven, eight, nine, ten, eleven, and twelve, in block No. nine; lot six, in block ten; lot twelve, in block thirteen; lot six, in block twenty-one; lot twelve, in block thirty-three; lots six and seven, in block twenty-five; lots two, three, and twelve, in block twenty-six; lots one and six, in block twenty-seven, and lot nine, in block thirty-two aforesaid; and in said book was charged against said lots respectively, over and above the rate per centum levied upon them in common with the other property in said ward, upon the valuation thereof, the several sums under the name of special tax, mentioned in schedule A, hereunto annexed and made part of this bill, and set against said lots respectively, and there was a sum set opposite each of said lots as the value thereof, which said several sums are mentioned in said schedule A, and set opposite said lots respectively; that the aggregate valuation of all said lots so described as last aforesaid, as by said book, was five hundred and twenty-five dollars, and the charges against them, under the name of special taxes, amounted to one thousand three hundred and twenty-five dollars and fourteen cents.

And your orator further shows, that he has caused an examination to be made of the books, papers, and vouchers appertaining to said charges against said lots, and forming the basis of the claim that said charges were legal, in the offices of the treasurer, clerk, and comptroller of said city, and inquiries to be made of said officers, and has found the documents, papers, &c., hereinafter set forth, to wit, an estimate for grading Grove and Marshall street, (in which said lots 1 and 12, in block 9; 6, in block 10; 7, in block 25; 12, in block 26, and lot 1, in block 27, were mentioned;) an estimate for grading Reed street, (in which said lots 1 and 12, in block 23, and 6 and 7, in block 31, are mentioned;) an estimate for planking Clinton street, (in which said lots 12, in block 13; 6 and 7, in block 21, and 9, in block 32, were mentioned;) an estimate of planking and grading side-walk on the west side of Clinton street, (in which said lots 1 and 12, in block thirteen, were mentioned;) an estimate of planking Washington street, (in which lot 2, in block six, is mentioned, and a certain amount of filling set against it.)

And your orator further shows, that said charge against lot 1, in block 9 aforesaid, is made up of pretended charges on account of grading Grove and Marshall, and planking Grove street; that against lot 12, in block 9 aforesaid, of pretended charges on account of planking Main, and grading Grove and Marshall streets, and grading Main; that against lot 6, in block 10 aforesaid, of pretended charges for grading Grove and Marshall streets, and planking Grove.

And your orator further shows, that there is no street called Grove and Marshall street; that there are separate streets of that

name; that none of said lots touch both of said streets, and that none of said lots are on Reed street.

And your orator further shows, upon information and belief, that no legal or valid notices requiring owners or occupants of lots to do work were given; but there are, in the office of said treasurer, the printed scrips purporting to have been published in one of the newspapers of said city, to wit, one bearing date April 15, A. D. 1853, directed to the owners or occupants of lots on the west side River, Clinton, Reed, and Kent streets, and the north side of Washington street, requiring them to plank the side-walk in front of their lots within twenty-one days from the said date, without mentioning the lots or blocks, or the names of their owners or occupants, or the work to be done, except as aforesaid; and the first publication was on the 18th day of April, as appears by an affidavit annexed; also another bearing date September 26, A. D. 1853, requiring planking and grading of certain streets within twenty-one days from the date thereof, but first published about three days after its date, directed to the owners or occupants of said streets, but without mentioning the lots or blocks, or the names of the owners and occupants, or the work to be done, except as above stated; also another bearing date on the 23d day of March, A. D. 1854, first published on the 27th day of said month, requiring the planking of the side-walk on the west side of said Clinton by the first day of May, A. D. 1854, directed to the owners or occupants of lots, without naming them on the lots or blocks, or mentioning the work to be done, except as aforesaid; and another bearing date on October 30, A. D. 1854, requiring certain work to be done, without describing it or the lots or block, or names of the owners or occupiers, and without any data from which one could discover when it was first published.

And your orator further shows, upon like information and belief, that in addition to said contract written in said book as aforesaid, there is in said office a contract made by the alderman of said ward with one John Rosebeck, bearing date on the 18th day of May, A. D. 1853, to plank Reed street from Oregon to Florida street, Florida from Reed to Grove, Grove and Marshall street from Florida to Maine, Maine street from Marshall to Chicago, and Chicago street from Maine to Railroad street, at 65½ cents per lineal foot, for laying plank, (of the dimensions and character described in said contract,) to be laid in centre of the road, and at 37½ cents per cubic foot for all earth either excavated or filled, whenever grading should be necessary, to be paid as the work should progress, but retaining fifteen per cent. as security for the fulfilment of contract, the whole to be done on the first day of October, A. D. 1853; on which said contract, charges against part of said lots were made as follows: said lot 6, in block 10, $45 85; on lots 2 and 3, in block 26, $16 38 each; on lots 1, 8, 9, 10, 11, and 7, in block 9, $16 38 each. Also another contract with one Conrad

Seeman to grade said Clinton street, and plank the same, (except as to certain blocks therein named,) at the price of 66 cents for planking per foot, and 35 cents per cubic yard for filling, to be completed on the first day of January, A. D. 1854; which said contract was, by an endorsement bearing date October 31, A. D. 1853, approved by the comptroller, except as to certain lots and blocks mentioned by the comptroller, or, as your orator contends, the contract as it stood was not approved.

And your orator further shows, that on November 17th, A. D. 1853, the alderman of said ward and comptroller gave to said Serman, as your orator is informed and believes, several certificates on said lots 9, in block 32; 12, in block 13; and six, in block 21 severally for forty-six dollars and twenty cents each, and on said lot six, in block 27, for $36 92 (the latter expressed and claimed to be for planking 44 feet and grading sixty-four yards.)

And your orator further shows, that said several lots are corner lots fronting on other streets, but with sides one hundred and forty feet on said Clinton street.

And your orator further shows, that there is (as he is informed and believes) another contract on file with said comptroller, signed by said alderman and one Francis Harmeyer, for grading Reed and Kent street from Mineral to Rail Road street, except certain lots therein mentioned, at 13 cents per cubic yard between Mineral and Washington, and 15 cents a yard for the balance, the whole to be completed by the 20th day of December, A. D. 1853.

And your orator further shows, that Reed street and Kent streets are two separate streets, and none of said lots fronted on any street named or called Reed and Kent, but he is informed and believes that said contract forms the basis of said charge against said lot 12, in block 23.

And your orator further shows, that said treasurer of said city of Milwaukee, (for the time being,) on or about the 15th day of January, 1854, offered said several lots mentioned in said schedule A at auction, and bid them off severally for said sums so charged against them as aforesaid, in the name of said city, and gave to said city certificates therefor in the same form usually given on the sale of lots for non-payment of legal taxes.

And your orator further shows, that on or about the last day of December, A. D. 1854, the treasurer of said city (for the time being) held in his possession a book claimed by him to be a tax list of the fifth ward of said city aforesaid, in which were described said lots 2, in block 6; 6, in block 3; 1, in block 23; and 6, in 31; and against them was marked severally a specific charge over and above the rate per centum levied upon said lots in common with other lots in said ward, upon the valuation thereof, under the name of special taxes, as follows, to wit, against said lot 2, in block 6, the sum of forty dollars and eighty-one cents; against said lot six, in block three, fifty-four dollars and thirty-five cents;

against said lot one, in block thirteen, one hundred and thirteen dollars and ninety-eight cents; and against said lot six, in block 31, ninety dollars and eighty-eight cents; that the aggregate valuation of said lots as given in said book, did not amount to over one hundred and fifty dollars, and that the aggregate of said special taxes last aforesaid was three hundred dollars and two cents.

And your orator further shows, that he has caused search to be made as aforesaid for the basis of said charges last aforesaid against said lots for the year 1854 aforesaid, and is informed and believes that said contract with said Francis Harmin for grading Reed and Kent streets was the basis of said charge against said lots one, in block 23, and six, in block 31; that there is a pretended contract of some nature with one John Somer, for filling Washington street, and that under said contract said charge was made against said lot 2, in block 6, for 162 yards of filling; and that there is a pretended contract with one Henry Meyer, for filling and planking Clinton street, under which contract said charge was made against said lot 6, in block 3, for 48 yards of filling and planking, but your orator or his agents have been unable to find said contract with the said Meyer or the said Somer, or obtain information as the particulars thereof, but believes, from circumstances and information, and so charges, that in the form and substance they (said contracts) did not conform to the requirements of the said charter, and were entered into by the said alderman without the authority of law, and were insufficient to charge said lots.

And your orator further shows, that he is informed and believes that there is an estimate on file in said office of said comptroller for filling and planking Washington street, and that against said lot 2, in block six, an estimate is made as set forth in the schedule hereunto annexed, marked (B); and another estimate for planking Reed street, dated October 4th, A. D. 1854, in which 2100 feet of planking are estimated against each of said lots 1 and 12, in block 23; and that said lot 1, fronts on Main street, and has a side 140 feet on Kent street, but does not touch Reed street; that there is another estimate of grading Reed street made in the year 1853, in which said lots 1 and 2, in block 23, and others of said lots hereinbefore set forth are mentioned, and the amount of work and cost estimated, as is set forth in schedule C, hereunto annexed and made part of this bill; and that the amount of work in said estimates do not agree with the amounts for which charges were made against said several lots under said contracts, but vary materially therefrom.

And your orator shows that he is informed and believes that there is in said office of said comptroller also an estimate for grading Main street between Grove and Chicago streets, and also one for grading Chicago street, in which divers of said lots hereinbefore mentioned are described and the work estimated, which said lots and the estimates against them as aforesaid are described in schedule (D), hereunto annexed and made part of this bill.

And your orator further shows, upon information and belief, that said several books, so in the hands of said treasurer as aforesaid, were not in themselves and from the substance legal tax lists, as recognized by the charter of said city, and that the proceedings necessary to make them such had not been duly taken; that no notice to the owners or occupants of lots to perform the work for which said several charges in the bill mentioned were pretended to be levied as aforesaid had been given, as required by the charter of said city, except as has hereinbefore been expressly stated and described; that no legal or sufficient notice of letting the contracts referred to in this bill had been given; that whenever a contract could be found, it varied both in form and substance from any contract allowed by the charter; that the measure of value of the work in said contracts was not money, but in all said contracts the work was payable in street commissioners' certificates by the terms thereof; that said contracts were never entirely performed on the part of the persons contracting to do the work; that in some instances charges were made against lots where months had elapsed after the time limited by the contract for performance had expired, before even any considerable progress had been made towards the fulfilment of the contracts; that said officers and their papers and books show no proof of the performance of the contracts by the contractors, or of the acceptance thereof by said alderman.

And your orator further shows, upon information and belief, that no evidence of any order to do such work as is charged against said several lots remains in or can be found in said offices, aside from the printed slips aforesaid, and that aside from the fact, that time allowed to perform the order in nearly all said instances had almost expired before the tenth publication could have taken place, the time allowed to perform was not reasonable.

Your orator concedes that to a certain extent the question of what is a reasonable time is submitted to the judgment of the commissioners, depending upon the time in which the work could conveniently be performed, and the necessity of the public; but your orator denies that it depends upon the arbitrary will of *of* the alderman. But your orator shows that the aldermen themselves conceded that said time allowed was not reasonable, by allowing, in said contracts to the contractors, time very much longer than that allowed to the owners by such order.

And your orator shows that the same discretion which is submitted by the charter to the aldermen, as to the reasonable time within which the order must be executed, is submitted to them as to the time to be allowed to the contractor, depending in both instances upon convenience in performance, and the necessity of the public, and the result must be the same in both instances. Your orator therefore denies that said aldermen had the right to fix a different and longer time in the contract from that fixed in the order as to the owners.

Your orator further shows, that in the absence of written or printed notices deferring and giving any greater term for the performance of such work, persons desiring to contract would be referred to the time limited in the order, and if that was too short and unreasonable, would be deterred from making proposals, or would demand a much higher price; and consequently, inasmuch as no such notice was given, as hereinbefore stated, many would be deterred from bidding for the contract, and the prices demanded would be greatly enhanced.

And your orator further claims, that by said charter the aldermen were obliged to fix definitely all the terms to be insisted upon by them in the contract to be made, and to invite proposals (as to price) for such a contract, and give it to the lowest bidder, and not vary or change the contract from that proposed by them; otherwise it becomes a different contract from that bid for. And your orator denies that in this behalf any discretion is vested in said aldermen, or that they can accept, so as to change the lots anything different from the completion of the contract in all its terms.

And your orator charges, upon information and belief, that said aldermen have never so let contracts agreeably to the said charter, and that said contracts have never been performed in all their terms.

And your orator further shows, that the said city and the said aldermen give out, pretend, and claim that each lot is chargeable with the amount of filling, and of excavation, and of planking opposite to it, from its front line to the centre of the street, and in case it is a corner lot, from its side line to the centre of the street running by its side, and that, without requiring an entire street to be graded or planked, they can arbitrarily cause work to be done on any portion of it, and even without causing the whole of the work (so ordered) to be done, can charge against a particular lot what by accident or design has been done opposite to it from its front to the centre of the street; and that said aldermen and city give out and claim that they have so charged said lots mentioned in this bill as aforesaid, and that such was the basis of said charges respectively; that said city and aldermen further claim, that notice so given, as is hereinbefore set forth, is to be construed as a notice and order upon the owner or occupant of each particular lot to do the work opposite his lot to the centre of the street, and that by doing such work he releases his lot from all charges.

Your orator, upon information and belief, denies that said charter furnishes any such basis, or confers any such right upon the said city or aldermen, or that it renders lots so chargeable, as is claimed by said city and aldermen as aforesaid, or that said notices are susceptible of said construction; but claims that if said lots were so chargeable, and if said notices should be so construed, that then each particular lot could be chargeable only with the cost of the work opposite it, and consequently the contract should follow

the notice, and should be for the one lot, inasmuch as the expense and cost of grading depends very much upon various circumstances peculiar to each lot, as, for instance, in some cases lots are so situate that persons would not only excavate, but pay for the earth, and in other cases would, on account of reverse circumstances, deposit earth for nothing; that this difference is to some extent shown by the different prices for the same amount of excavation and filling in said contracts hereinbefore referred to, varying from thirty-seven and one-half cents per cubic foot, as in said contract of said Rosebeck, to thirteen cents per cubic yard, in said contract of said Harmeyer; that where filling and excavating are to be done opposite the same lot or contiguous lots, they might be done for very little; that therefore the price per yard, fixed either for an entire street or a number of streets, does not determine the cost or value of work opposite any one lot. And your orator, upon information, denies that said aldermen asked, advertised for, or received any proposals for work opposite said several lots separately on those so belonging to your orator collectively, and affirms that they would enter into contracts only for large amounts as aforesaid.

And your orator further shows, that when said order required plank to be laid in the centre of the street, it became and was impossible for the owner of any lot to do his part from the front of his lot to the centre without the concurrence and co-operation of the owner of the lot opposite, and that therefore such order was not susceptible of performance.

And your orator, upon his information and belief, charges that no proceedings required by the charter, in order to make said charges legal charges, other than herein have been set forth and referred to, have been had.

And your orator further shows, that although by said charter said estimates, orders, and contracts should agree with each other, the one calling for no more work or planking to be done than the other, yet that they did not so agree, but varied in essential particulars from each other.

And your orator further shows, that by one order to grade and plank said streets, or by one contract therefor, the aldermen of said ward exhausted all power given them in the charter in that behalf, and could not require it, or exercise said power a second time. And your orator denies all notice to himself, actual or constructive, of said order or contracts, and all knowledge whereof, except such as he has acquired since said sales as aforesaid.

And your orator further shows, that by the constitution of the State of Wisconsin, the rule of taxation was required to be uniform, and yet, while the highest rate ever levied upon the property generally in said ward was not over six per centum upon the valuation thereof, and said rate was for each of said years in said book so levied upon said lots hereinbefore described as aforesaid, yet that

said additional charges amount to more than two hundred per cent. upon the valuation thereof for said years respectively, and that therefore the rule of taxation on said lots is not uniform.

Your orator further shows, that said constitution requires the legislature to impose restrictions and a limit upon the power of taxation in municipal corporations, and therefore claims that if said charter is properly construed, as claimed by the said city and said aldermen as aforesaid, it is a violation of the constitution and void, such power of taxation as claimed by them being without limit.

And your orator further shows, that the said corporate authorities of said city sometimes, to avoid the force of said provisions of the constitution, give out and pretend that said charges, denominated special taxes as aforesaid, are not taxes, but are assessments against said lots, and therefore that said provisions of said constitution do not apply.

And your orator shows that if, as is contended as aforesaid, the imposition of said charges upon said lots of your orator does not belong to or come under the taxing power of government, then there is another provision of said constitution, that private property shall not be taken for public uses without just compensation therefor.

And your orator claims and shows that his labor, earth, and plank, and money are properly within the meaning of said provision, and that no compensation, either directly or indirectly, has been made or offered to your orator for said work, or materials, or money so exacted as aforesaid, and that the same are demanded from your orator without any regard to his interests, and without any intention of making him compensation.

And your orator further shows, that said charges against his said several lots, amounting to more than two hundred per cent. upon the value thereof, as mentioned in said books, (and claimed to be assessed,) are void as against common right, being excessive, and an abuse of power both of municipal and State government.

And your orator further shows, that said several lots so belonging to him as aforesaid are of great value, to wit, of the value of more than five hundred dollars.

And your orator further shows, that said Kuehn is now treasurer of said city, and has in his hands, as such treasurer, said several certificates so given as aforesaid upon said pretended sales.

And your orator charges that all said several charges and taxes, so levied upon said lots of your orator as aforesaid, and so charged against them in said books as aforesaid, are illegal, and that said treasurer has no authority to collect the same, or to sell said lots of your orator as aforesaid to pay the same, and that said certificates so given by said treasurer as aforesaid are illegal and voidable.

And yet the aldermen aforesaid, and the common council of said city, and said treasurer, acting under the color of office, and abus-

ing the powers conferred on them by law, and for the purpose of extorting from your orator and others, property holders in said city, large amounts of money, insist that they had the legal right to collect said taxes and charges, and to sell said premises for non-payment thereof, and did sell said premises of your orator as aforesaid, and did give said certificates as aforesaid, which, although legal on their face, being given under color of office as aforesaid, are yet, in fact and in law, illegal and voidable as aforesaid.

And your orator further shows, that by said sales severally he has been greatly disturbed in his enjoyment of said premises, and an apparent legal incumbrance upon them has been created by said certificates of sale so given as aforesaid, and that, by a deed in the usual form of deeds given on tax sales for legal taxes, constituting, under the laws of Wisconsin, prima facie evidence of title, a cloud would be thrown over the title of your orator to said premises, whereby he would be prevented from selling the same.

And your orator further shows, that said common council and treasurer claim that upon the expiration of three years from the date of said sales respectively, and the giving of a deed as aforesaid, the title of your orator to said premises will be divested; and they give out and threaten that unless said certificates shall be sooner redeemed, with interest at the rate of twenty-five per cent., they will give a deed as aforesaid (which shall be prima facie evidence of title as aforesaid) to any one who shall pay to them the amount of said charges, and interest at twenty-five per cent.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that the said city of Milwaukee may, according to the law and practice of this court, and the said Ferdinand Kuehn, (all answer,) under oath being expressly hereby waived, may, according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises.

And that, on the final hearing of this cause, the said certificates of sale so given by said treasurer as aforesaid be declared illegal and void, and the said city of Milwaukee, their agents, officers, and servants, and all persons claiming or to claim by, through, or under them, be perpetually enjoined from assigning said certificates, or either of them, and from setting up any claim to said premises, or any portion of them, (so belonging to your orator as aforesaid,) and from claiming a deed, as called for by said certificates; and that said city, its agents and officers, and the said Kuehn, treasurer of said city as aforesaid, and his successors in office, be perpetually enjoined from giving, or causing to be given, a deed of said premises, so sold as aforesaid, or any part thereof, to any person or persons or corporation claiming by or through said sales, or by, through, or under said certificates, as assignees of said city, or

otherwise; and for such other or further relief in the premises as may be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable court, directed to said city, its officers, agents, and servants, and to said Ferdinand Kuehn, treasurer as aforesaid, and his successors therein, and thereby restraining them and each of them from selling, assigning, transferring, or giving deeds upon said certificates of sale, or any of them, until the final decree in this cause.

May it please your honor to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the city of Milwaukee aforesaid, and to Ferdinand Kuehn, treasurer of said city as aforesaid, therein and thereby commanding them and each of them, under a certain penalty, and by a certain day therein to be specified, to be and appear before this honorable court, and then and there to stand to, perform, and abide by such order, direction, and decree in the premises as to your honor may deem meet.

DEAN RICHMOND,
By THOMAS L. OGDEN.

BROWN & OGDEN,
Solrs. and of counsel for Complt.

DISTRICT OF WISCONSIN, *ss:*

On this tenth day of November, A. D. 1855, personally came before me Thomas L. Ogden, who, being duly sworn, deposeth and saith, that he is as one of the firm of Brown & Ogden; is agent and attorney for the said complainant, Dean Richmond, and that he has read the foregoing bill, and knoweth the contents thereof, and that he hath information in regard to the several matters and things therein set forth, and from such information believes them to be true.

B. K. MILLER,
Clerk and Comr.

Schedule A, annexed to Bill of Complaint.

Lots.	Block.	Valuation.	Special Tax.
1	9	35	176 99
7	"	20	16 48
8	"	20	16 48
9	"	20	16 48
10	"	20	35 92
11	"	20	45 28
12	"	35	207 09
6	10	25	156 47

12	13	40	46 30
6	21	95	46 30
12	23	20	19 60
6	25	25	70 30
7	25	25	104 70
2	26	25	47 08
3	26	25	36 82
12	26	30	67 70
1	27	30	143 90
6	27	20	45 95

Washington Street. Schedule B.

Lot.	Block.	Fill. or Ex.	Street do.	Plank.
2	6	80 fill.	82 fill.	70 ft.

Reed Street. Schedule C.

Lot.	Block.	Fill.	Ex.	Cost.
1	23		883	$88 30
12	23	64	66	6 60
6	31		729	72 90
7	31		636	63 60

Grading Main. Schedule D.

Lot.	Block.	Ex.	Fill.
7	9	15	53
9	9	47	
9	9	55	
10	9	108	
11	9	160	
12	9	217	
2	26	170	
3	26	113	

And same day said complainant entered in the order and rule book an order that the defendants show cause by Wednesday, the 14th day of November inst., at ten o'clock in the forenoon, why an injunction should not be issued according to the prayer of the bill on file.

Which said order is in the words and figures following, to wit;

Rule for Injunction.

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE
and others.

On motion of Brown and Ogden, solicitors for the complainant,

it is ordered that the defendants appear, on Wednesday morning next, at 10 o'clock a. m., and show cause why an injunction should not issue in pursuance to the prayer of the bill on file.

Dated Saturday, Nov. 10th, 1855.

BROWN & OGDEN,
Sol'rs for Compl't.

Whereupon a subpœna issued, as follows:

Subpœna.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States to the city of Milwaukee and [SEAL.] Ferdinand Kuehn, greeting:

You are hereby commanded that you personally appear before the judge of the district court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of December next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Dean Richmond.

And to do further and receive what our said court shall have considered in that behalf: and this you are not to omit, under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said the City of Milwaukee and Ferdinand Kuehn, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this tenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth.

B. K. MILLER, *Clerk.*
BROWN & OGDEN, *Solicitors.*

It is ordered by our said court that the said the City of Milwaukee and Ferdinand Kuehn, the defendant aforesaid, do enter their appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid, otherwise the bill filed may be taken as confessed. And it is further ordered that they show cause by Wednesday, the fourteenth day of November inst., at ten o'clock in the forenoon, why an injunction should not be issued according to the prayer of the bill on file.

Return to Subpœna.

And said subpœna was returned by the marshal with his return of service endorsed thereon, as follows:

Served personally by showing the original and delivering a copy of the within to the within named Ferdinand Kuehn, and upon the city of Milwaukee, by showing the original and delivering a copy of the within injunction to R. Whitehead, clerk of the city of Milwaukee.

November 10, 1855.

S. V. R. ABLEMAN, *Marshal.*
Pr. C. C. COTTON, *Dep.*

And afterwards, to wit, on the twenty-first day of November, A. D. 1855, the following proceedings were had, to wit:

Injunction Allowed.

This day the motion of this complainant for an injunction came on to be heard, and was argued by Mr. Brown for the complainant and Mr. Foote for the defendants. On consideration whereof, and of the bill of complaint on file, it is ordered that an injunction be and is hereby allowed according to the prayer on file and injunction issued.

Whereupon an injunction issued, as follows, to wit:

Injunction.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to the City of Milwaukee, and its officers, agents, and servants, and to each and every of them, and to Ferdinand Kuehn, treasurer of said city of Milwaukee, and to his successors in office, greeting: [SEAL.]

Whereas, it has been represented to the judge of the district court of the United States of America for the district of Wisconsin in equity, on the part of Dean Richmond, that he has lately exhibited his bill of complaint in said court, before the judge thereof, against you the said The City of Milwaukee and Ferdinand Kuehn, defendants in said bill mentioned, to be relieved touching the matters therein complained of.

Therefore, in consideration thereof, and of the particular matters in the said bill set forth, you, the said The City of Milwaukee and Ferdinand Kuehn, and the persons before mentioned, and each and every of you, and in the penalty which may ensue, are hereby strictly charged and commanded that you and each and every of you do absolutely desist and refrain from selling, assigning, transferring, or giving deeds upon certain instruments purporting to be certificates given on sales for taxes levied on the following real estate situated in Milwaukee proper, in the fifth ward of the city

of Milwaukee, in the district of Wisconsin, under the special act of the legislature of Wisconsin of 1851, and for taxes levied on said real estate in the years 1851, 1852, 1853, and 1854, severally, to wit: lot No. 6, in block No. three; lot No. two, in block No. six; lots one, seven, eight, nine, ten, eleven, and twelve, in block No. nine; lot No. six, in block No. ten; lot No. twelve, in block No. thirteen; lot six, in block twenty-one; lots one and twelve, in block No. twenty-three; lots six and seven, in block No. twenty-five; lots two, three, and twelve, in block No. twenty-six; lots No. one and six, in block No. twenty-seven; lots No. six and seven, in block thirty-one; lot No. nine, in block No. thirty-two.

This process is directed to the marshal for the district of Wisconsin, who is hereby commanded to serve the same upon the said The City of Milwaukee and Ferdinand Kuehn, if found within his district, and due return thereof make without delay.

Witness, the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in said district of Wisconsin, this 21st day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

B. K. MILLER, *Clerk.*
BROWN & OGDEN, *Solicitors.*

Return to Injunction.

And said injunction was returned by the marshal, with his return of service endorsed thereon, as follows:

Served personally on Ferdinand Kuehn, by showing him the original, and delivering to him a copy thereof, and also by showing the original and delivering a copy to Robert Whitehead, clerk of the city of Milwaukee.

November 22, 1855.

S. V. R. ABLEMAN, *Marshal.*

Defendant's Appearance.

And afterwards, to wit, on the third day of December, A. D. 1855, came the said defendants, by Mr. Foote, their solicitor, and filed their appearance; which said appearance is in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES,
For the District of Wisconsin.

THE CITY OF MILWAUKEE and Ferdinand Kuehn ads. DEAN RICHMOND.

To the clerk of said court:

I do hereby appear as the solicitor for the defendants in this

cause. The clerk will enter my appearance for said defendants accordingly. Dec. 3, 1855.

Yours, &c.,

E. FOOTE,
City Att'y.

Answer.

And afterwards, to wit, on the seventh day of January, A. D. 1856, came the said defendants by their said solicitor, and filed their answer; which said answer is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Wisconsin.

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE and Ferdinand Kuehn, treasurer of said city.

The joint and several answers of the city of Milwaukee and Ferdinand Kuehn, treasurer of the city of Milwaukee, defendants, to the bill of complaint of Dean Richmond, complainant.

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say, that they do not know whether the said complainant is the owner in fee, or is seized in fee simple of the lots and lands described in his said bill of complaint, and therefore deny that he is the owner of or is seized in fee simple of said lands described in said bill of complaint or any part thereof, or that he is in the possession or occupation thereof, and these defendants further answering admit that "the city of Milwaukee" sets up a claim thereto, and claims that the city of Milwaukee has a right, by virtue of its charter, to levy taxes upon the real estate situated in said city, upon certain conditions and under certain restrictions determined by law and the charter thereof, and that when such taxes and assessments are not paid, the treasurer of said city has the right, under certain conditions and restrictions, to sell the lots and pieces of land upon which such taxes and assessments are made and levied at public auction, and to give a certificate upon such sale to the purchaser, by virtue of which he or his assignee becomes, at the end of three years from such sale, entitled to a deed from such treasurer of the premises so sold and described in said certificate, and that said deed vests in

the grantee therein named a good, perfect estate in fee simple in such property, and divests the former owner of the estate in said lands. And these defendants deny that the proceedings in levying, assessing, and collection of said taxes and assessment set forth in said complainant's bill of complaint were illegal, or that the sale of said lands, or any part thereof, was illegal; but avers that the whole proceedings in levying, assessing said lands were conducted according to law and equity, and the proceedings in selling said lots and lands were and are in every respect legal and equitable in every respect; and that if there has been any irregularity of any kind, it has not been such as to affect the substantial justice of the case, or of the tax itself, but that all taxes and assessments for improvements on streets and side-walks have been for improvements in front of and adjacent to said lots, and such as are authorized by law, and such as have greatly enhanced the value of said lots and lands. And these defendants furthering answering, say, that on or about the 28th day of May, 1851, the treasurer of said city held in his hands a certain book, which he called a tax list of said fifth ward, made under an act entitled "An act to authorize the assessment and collection of taxes in the city of Milwaukee," and that said book was in fact a legal tax list, and that all the preliminary steps had been taken which were necessary to make it so, and that all the papers and records necessary to be kept, showing the authority for making said charges, are kept in the proper offices where such records are by law to be kept. And these defendants further answering, say, that such special taxes referred to in the schedule described in the complainant's bill of complaint filed in this cause were made upon the levies of the estimate properly ("and not arbitrarily") made according to the amount of grading and filling opposite each lot, and that said estimate was just and proper, and in every respect authorized by law, according to justice and equity, and that the work for which said taxes were levied was duly performed for the benefit of said lots so taxed. And these defendants further answering, deny that any of said taxes of 1849 have been declared illegal and void, as is set forth in the complainant's bill of complaint, but that the same is valid and binding. And these defendants further answering, say, that the treasurer did, on or about the 28th day of May, 1851, offer said lots for sale, as is set forth; and that he had a perfect right so to do, by virtue of the charter of the city of Milwaukee, and of said special act; and that they were bid in by the city, and certificates given, as is set forth; but these defendants deny that there was any adjournment of said sale, except such as was authorized by law. And these defendants further answering, admit, that on or about the last day of December, A. D. 1852, the then treasurer of said city held in his hands a certain book, which was in fact the tax list of said fifth ward; and these defendants deny that there was no tax list or book containing a tax list for the city, as is set forth in

complainant's bill of complaint, and these defendants aver that the taxes contained in said tax list were legally assessed and raised on said lots set forth and described in said tax list, and are in every respect correct, and that if any errors have occurred in the levying or collection of any of said taxes, they are not such errors as affect the substantial justice of the taxes themselves. And these defendants further answering, say, that there was an order, as required by law, made in relation to the grading of the streets referred to in complainant's bill of complaint, as having been done by William Cook, and all the proceedings in relation thereto proper and regular, to make said charges legal charges against said lots; and that the whole proceedings referred to in regard to Marshall street were valid and sufficient to support a special tax under said charter, or that if there was any irregularity, error, or informality in the proceedings, that they were not such as to affect the substantial justice of the tax.

And these defendants further answering, admit, that said lots were sold in January, 1853, as is set forth, and bid in in the name of the city of Milwaukee, and the certificates given as by the charter the said treasurer had a lawful right to do.

And these defendants further answering, admit, that on or about the last day of December, A. D. 1853, the treasurer of said city had in his hands a certain book, which he claimed to be, and in fact was, a tax list of the fifth ward of the city of Milwaukee for the year 1853, and that the charges for special and other taxes in said book named were legal taxes, and that the proceedings in relation thereto were in every material part regular, and said taxes were just and beneficial to said property, and that all of grading, filling, and planking of streets and side-walks charged to said lots was done and paid for by the said city, and that the value of said lots is very much enhanced thereby. And these defendants further answering, say, that there is such a street as Grove and Marshall street; that one is a continuation of the other, and are known and so described, and that the streets were graded, filled, and planked opposite the lot 1, in block 9, and that the street was improved opposite lot 12, block 9, as charged in said tax; that said lot is a corner lot, in the corner of Main and Marshall streets, and that all of the taxes for work, planking, grading, and filling on Main, Marshall, and Grove streets are for grading, filling, and planking actually done, and that all the steps and proceedings necessary to be had to make said taxes legal were had and taken, and that they are legal, equitable, and just. And these defendants furthering answering, say, that the notices given requiring owners or occupants to make the improvement on the streets, set forth in said complainant's bill of complaint, were regular and timely, and that the notices were published according to the requirements of the charter; and deny that there is any law requiring that the notice shall specify every lot and block separately, but that an order fully defining and describ-

ing the work to be done is all that the law requires; and that it is not necessary to name the owner or occupant by name, but that a direction to "the owner or occupant" is sufficient. And these defendants further answering, admit that there was a contract entered into by the street commissioners of the fifth ward with John Rosebeck, in 1853, for planking and grading streets, in substance as is set forth in said complainant's bill of complaint, and that commissioner's certificates were issued for the amounts set forth in said bill of complaint for the performance of said contract by said Rosebeck; and these defendants aver that said planking and excavating was performed, and that said proceedings in relation thereto were legal, and the tax so assessed for said work was just and equitable, and according to law, and that if there was any error or informality in the proceedings, that such error or informality was not such as to affect the substantial justice of the tax itself. And these defendants further answering, say, that the contracts named in the complainant's bill of complaint as having been made with John Rosebeck, and also the one made with Conrad Lorman, were good and valid contracts, and that the work for which certificates were issued was performed, and that the taxes and assessments against said lots were legal, just, and equitable, and that if there was any irregularity in the making or extension of any of said contracts, that such irregularity was waived by the parties to the contract, and the work duly and properly performed for the benefit of the property assessed for said work, and said property greatly enhanced in value thereby.

And these defendants further answering, in relation to the contract made with Francis Harmeyer, say, that all of the proceedings in relation to making said contract were legal, and according to the provisions of the charter of the city of Milwaukee, and that all the work specified in said contract to be performed was performed, and that no certificate has been given against any lot, except the work has been done adjacent to such lot, and that such lot and lots were properly chargeable therefor and benefited thereby, and that in honesty and justice the owners should pay the same.

And these defendants further answering, admit that the several lots named in schedule "A," in complainant's bill of complaint, were sold and bid off as specified, and that certificates were given in the usual form, as set forth in the complainant's bill of complaint; and these defendants aver that all of the proceedings in relation thereto were legal and valid. And these defendants further answering, admit, that in December, 1854, the treasurer of said city held in his possession a book claimed by him to be a tax list of the fifth ward of said city aforesaid, and these defendants aver that the same was a tax list of said ward, and that all of the taxes and assessments against the lots referred to in complainant's bill of complaint, as having been described in said tax list, were legally assessed, and that all the special taxes levied on said lots

were according to law, and that it is immaterial whether said complainant's lot were valued at one hundred or one thousand dollars, so long as said lots were liable for the payment of said taxes; and if the taxes have accumulated on said lots, it is because said complainant has neglected and refused from year to year to pay his taxes, while the improvements for which said taxes are levied have enhanced the value of said lots more than tenfold; and that all of said work, for which said assessments were made, was done under contracts duly entered into by the street commissioners of said ward, and that all of the work charged as a tax on said lots was done, and that in relation to what the complainant terms "a pretended contract," these defendants know nothing about a "pretended contract," but that all the contracts which have been made are and have been real contracts, and made in conformity with the charter; and they deny that any contract has been made with Henry Meyer or John Somer, which was not in accordance with the charter of the city of Milwaukee, and in every respect sufficient in law to charge said lots.

And these defendants aver that the several estimates referred to in the complainant's bill of complaint were duly and properly made, and the contracts for performing the work so estimated were duly made after due notice to the owner to perform said labor, and that said work was let to the lowest bidder, agreeable to the provisions of the charter; and that if there is any variation between the estimate so made and the contract price, it was because no person could be found who bid off or offered to perform said work for a less price than specified in said contract, and that substantial justice has been done in procuring said work to be doue, and in taxing the same to the lots adjacent to whom said work was done, and that in no instance has there been any tax or assessment against any lot described in complainant's bill of complaint for work unless said work had been actually performed, and was properly chargeable to such lot. And these defendants further answering, say, that in every instance and in all cases where taxes have been assessed or certficates given upon lots named in the complainant's bill of complaint, that the estimates herein were duly made; that the notice to the owners or occupants of said lot or lots have been duly and legally given; that the owners or occupants have neglected to do said work, and that the street commissioners have invited proposals for doing said work, and have let said work in every instance by contract to the lowest bidder; that said contracts have been duly and legally made and entered into, and that the work for which taxes have been assessed has been and was actually perfomed under and by virtue of such contract, and that in every instance the whole proceedings in relation to the laying the foundation for said taxes, and the levying and assessing the same, have been and are in accordance with the provisions of the charter of said city of Milwaukee, and that the whole proceedings in relation to the levying

said assessments and taxes, and the sale of said lots, and the giving of certificates, have been and are in every respect legal and just, and that no error or irregularity has occurred which has in the slightest degree affected the substantial justice of the tax itself, all of which have been and still are matters of record in the proper offices of the city of Milwaukee, or can be shown by the papers and books in said offices.

And these defendants further answering, admit that they did not contract to pay for the said work in cash, but that said work was to be paid for in street commissioners' certificates and not otherwise; and these defendants aver that is the only way which the street commissioners are authorized to contract, and that any different contract to pay in any other way would be illegal and void, and contrary to the charter of said city.

And these defendants further answering, deny that the street commissioners have not the legal right and authority to order a part of a street to be graded, paved, or planked, without ordering the whole of the street to be so graded, paved, or planked, or that when they shall have caused one part of a street to be graded that they have no power to cause the residue of the same street to be graded; and the defendants deny that the earth in the streets belongs to the owners of the lots adjacent to the same, so as to prevent the city from taking it to repair the streets, or if not graded by the owner of the lot, to prevent the city from taking the same away in making such street, but that for the purposes of making the streets the city has a right to use and remove such earth without compensation—such streets having been laid out and opened according to law.

And these defendants further answering, admit that the constitution of the State of Wisconsin in relation to taxation is correctly stated, and do not deny but that they are bound by the constitution, but deny that they have violated any of the provisions of said constitution, but own that, without regard to the value of any lot, the lots fronting on the street are liable to be taxed for the expense of improving the streets or sidewalk in front of such lot.

And these defendants further answering, admit and claim that, upon the expiration of three years from the date of said sales respectively, they have a lawful right to execute deeds of said lots, unless they shall sooner be redeemed by the owners thereof, and that the title of said complainant to said lots will be divested; and these defendants deny all intention to wrong or injure said complainant, or that any part of the proceedings had, done, or performed by said city of Milwaukee, or any of the city officers, in relation to the matters charged in said bill of complaint, are contrary to law and justice; and these defendants deny that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed, avoided, traversed, or denied, is true to the knowledge of

these defendants; all of which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

THE CITY OF MILWAUKEE,
FERDINAND KUEHN,
By E. FOOTE, *their Solicitor.*

E. FOOTE,
Solicitor, and of Counsel for Defendants.

Replication.

And afterwards, to wit, on the 10th day of January, A. D. 1856, came the said complainant by his solicitors, and filed his replication; which said replication is in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES,
For the District of Wisconsin.

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE and FERDINAND KUEHN, treasurer, &c. } In chancery.

Before the honorable Andrew G. Miller, judge, &c.

The replication of Dean Richmond, complainant, to the joint answer of the city of Milwaukee and Ferdinand Kuehn, defendants, to the bill of complaint of said complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies in said answer, for replication thereunto, saith: That he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law, to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by said bill he hath already prayed.

BROWN & OGDEN,
Solrs. for Complt.

Agreement as to Testimony.

And afterwards, to wit, on the 11th day of June, A. D. 1856,

came the parties by their solicitors, and filed their agreement in writing; which said agreement is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Wisconsin.

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE and Ferdinand Kuehn. } April term, A. D. 1856.

It is stipulated between the parties to this suit, by their attorneys respectively, that on the trial of this cause, certified copies of any deeds, and copies of any papers in the offices of the clerk of the common council, city comptroller, street commissioner, and city treasurer of the city of Milwaukee, and abstracts, being copies of such as they purport to be, from any records in either office in each case, properly certified to by the officer having the custody of the same, shall and may be read and used as evidence in this case; and that any parole evidence may be taken by either party, on one day's notice to the other, before a commissioner of this court, at any time before said cause comes on for trial, to be used and read on said trial; said copies and abstracts to be used to the same extent that the original might be if produced. This evidence to be filed before the trial.

Milwaukee, April 10, 1856.

BROWN & OGDEN,
Solrs. for Complts.
UPHAM & GRAHAM,
Solrs. for Defts.

Complainant's Testimony.

On the part of the complainants, the following was admitted as evidence at the hearing of this cause:

Exhibit A.

Abstract of title to lot 6, in block 3; lot 2, in block 6; lots 1, 7, 8, 9, 10, 11, and 12, in block 9; lot 6, in block 10; lot 12, in block 13; lot 6, in block 21; lots 1 and 2, in block 23; lots 6 and 7, in block 25; lots 2, 3, and 12, in block 26; lots 1 and 6, in block 27; lots 6 and 7, in block 31, and lot 9, in block 32, in Milwaukee proper, in the fifth ward of the city of Milwaukee, and in lot 4, of sec. 32, township 7, range 22. Lot 4, in sec. 32, t. 7, r. 22, was entered by Isaac P. Walker, September 4, 1835, and was subsequently patented to James Sanderson, said lot 4 containing $65\frac{90}{100}$ acres. Patent recorded vol. E of deeds, page 411. See assignment of duplicate, vol. A of deeds, page 119.

Vol. A of deeds, page 9.	James Sanderson to Alanson Sweet.	September 25, 1835, conveying an undivided ½ of lot 4, sec. 32. t. 7, r. 22.

Warr'ty. 1 witness. Ack. defective; no county named. No county named in acknowledg't. James Sanderson and wife, Timothy Harris, by S. V. R. Harris, his agent, J. D. Doty and wife, Charles N. Laskin and wife, Jesse Rhodes, Alanson Sweet, Peter McMartin and wife, by Wm. N. Gardner, her attorney, and James McMartin, by Wm. N. Gardner, his attorney, joint owners of lot 4, sec. 32, t. 7, r. 22, execute, March 22. 1837, an agreement with each other, among other things appointing Solomon Juneau, J. D. Doty, Alanson Sweet, and Jesse Rhodes, and Charles H. Laskin trustees, on behalf of the proprietors, to lay out said premises into town lots, and to make improvements not exceeding $40,000. The said trustees to meet and appoint a president and such other officers as the majority, &c., &c. 2 witnesses. Vol. E of deeds, page 149.

Lot 6, in block 3; lot 2, in block 6; lots 1, 7, 8, 9, 10, 11, and 12, in block 9; lot 12, in block 13; lot 6, in block 21; lots 1 and 12 in block 23; lots 6 and 7, in block 25; lots 1 and 6, in block 27; lots 6 and 7 in block 31; and lot 9, in block 32, were set off among other pieces in severalty to Alanson Sweet and unknown owners, by decree in partition, in the suit of James Sanderson vs. Timothy Harris, James McMartin, Peter McMartin, James D. Doty, and Alanson Sweet, June term, 1838. Lot 6, in block 10, and lots 2, 3, and 12, in block 26, were set off among other pieces in severalty to James Sanderson.

Vol. T of deeds, page 240.	Alanson Sweet and wife to Luzerne Ransom.	Dec. 28, 1846, conveying with another piece lot 6, in block 3, in Milwaukee proper. Warr'ty. except the taxes of 1844, 1845, and 1846. 2 witnesses.
Vol. V of deeds, page 528.	Luzerne Ransom and wife to Alanson Sweet.	January 15, 1848, conveying with another piece lot 6, in block 3, in Mil. proper. Warr'ty. 2 witnesses.
Vol. K of mort8's, page 373.	Alanson Sweet and wife to Dean Richmond.	December 10, 1849, conveying among other pieces lot 6, in block 3;

lot 2, in block 6; lots 1, 7, 8, 9, 10, 11, and 12, in block 9; lot 6, in block 10; lot 12, in block 13; lot 6, in block 21; lots 1 and 12, in block 23; lots 6 and 7, in block 25; lots 2, 3, and 12, in block 26; lots 1 and 6, in block 27; lots 6 and 7, in block 31; and lot 9, in block 32, in Milwaukee proper, 5th ward, to secure the sum of $7,596 77, according to two bonds of even date, one of

came the parties by their solicitors, and filed their agreement in writing; which said agreement is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Wisconsin.

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE and FERDINAND KUEHN. } April term, A. D. 1856.

It is stipulated between the parties to this suit, by their attorneys respectively, that on the trial of this cause, certified copies of any deeds, and copies of any papers in the offices of the clerk of the common council, city comptroller, street commissioner, and city treasurer of the city of Milwaukee, and abstracts, being copies of such as they purport to be, from any records in either office in each case, properly certified to by the officer having the custody of the same, shall and may be read and used as evidence in this case; and that any parole evidence may be taken by either party, on one day's notice to the other, before a commissioner of this court, at any time before said cause comes on for trial, to be used and read on said trial; said copies and abstracts to be used to the same extent that the original might be if produced. This evidence to be filed before the trial.

Milwaukee, April 10, 1856.

BROWN & OGDEN,
Solrs. for Complts.
UPHAM & GRAHAM,
Solrs. for Defts.

Complainant's Testimony.

On the part of the complainants, the following was admitted as evidence at the hearing of this cause:

Exhibit A.

Abstract of title to lot 6, in block 3; lot 2, in block 6; lots 1, 7, 8, 9, 10, 11, and 12, in block 9; lot 6, in block 10; lot 12, in block 13; lot 6, in block 21; lots 1 and 2, in block 23; lots 6 and 7, in block 25; lots 2, 3, and 12, in block 26; lots 1 and 6, in block 27; lots 6 and 7, in block 31, and lot 9, in block 32, in Milwaukee proper, in the fifth ward of the city of Milwaukee, and in lot 4, of sec. 32, township 7, range 22. Lot 4, in sec. 32, t. 7, r. 22, was entered by Isaac P. Walker, September 4, 1835, and was subsequently patented to James Sanderson, said lot 4 containing $65\frac{90}{100}$ acres. Patent recorded vol. E of deeds, page 411. See assignment of duplicate, vol. A of deeds, page 119.

Vol. A of deeds, page 9.	James Sanderson to Alanson Sweet.	September 25, 1835, conveying an undivided ½ of lot 4, sec. 32, t. 7, r. 22. Warr'ty. 1 witness. Ack. defective; no county named. No county named in acknowledg't. James Sanderson and wife, Timothy Harris, by S. V. R. Harris, his agent, J. D. Doty and wife, Charles N. Laskin and wife, Jesse Rhodes, Alanson Sweet, Peter McMartin and wife, by Wm. N. Gardner, her attorney, and James McMartin, by Wm. N. Gardner, his attorney, joint owners of lot 4, sec. 32, t. 7, r. 22, execute, March 22, 1837, an agreement with each other, among other things appointing Solomon Juneau, J. D. Doty, Alanson Sweet, and Jesse Rhodes, and Charles H. Laskin trustees, on behalf of the proprietors, to lay out said premises into town lots, and to make improvements not exceeding $40,000. The said trustees to meet and appoint a president and such other officers as the majority, &c., &c. 2 witnesses. Vol. E of deeds, page 149.

Lot 6, in block 3; lot 2, in block 6; lots 1, 7, 8, 9, 10, 11, and 12, in block 9; lot 12, in block 13; lot 6, in block 21; lots 1 and 12 in block 23; lots 6 and 7, in block 25; lots 1 and 6, in block 27; lots 6 and 7 in block 31; and lot 9, in block 32, were set off among other pieces in severalty to Alanson Sweet and unknown owners, by decree in partition, in the suit of James Sanderson vs. Timothy Harris, James McMartin, Peter McMartin, James D. Doty, and Alanson Sweet, June term, 1838. Lot 6, in block 10, and lots 2, 3, and 12, in block 26, were set off among other pieces in severalty to James Sanderson.

Vol. T of deeds, page 240.	Alanson Sweet and wife to Luzerne Ransom.	Dec. 28, 1846, conveying with another piece lot 6, in block 3, in Milwaukee proper. Warr'ty, except the taxes of 1844, 1845, and 1846. 2 witnesses.
Vol. V of deeds, page 528.	Luzerne Ransom and wife to Alanson Sweet.	January 15, 1848, conveying with another piece lot 6, in block 3, in Mil. proper. Warr'ty. 2 witnesses.
Vol. K of mort8's, page 373.	Alanson Sweet and wife to Dean Richmond.	December 10, 1849, conveying among other pieces lot 6, in block 3; lot 2, in block 6; lots 1, 7, 8, 9, 10, 11, and 12, in block 9; lot 6, in block 10; lot 12, in block 13; lot 6, in block 21; lots 1 and 12, in block 23; lots 6 and 7, in block 25; lots 2, 3, and 12, in block 26; lots 1 and 6, in block 27; lots 6 and 7, in block 31; and lot 9, in block 32, in Milwaukee proper, 5th ward, to secure the sum of $7,596 77, according to two bonds of even date, one of

which is executed by the party of the first part, and the other by the party of the first part and James Bonnell. 2 witnesses.

Vol. 35 of deeds, page 105.	John White, sheriff Milwaukie county, to Dean Richmond.	Sheriff's deed on foreclosure in the suit of Dean Richmond vs. Alanson Sweet, Emily Sweet, Francis W. Hawley, Eliphalet Cramer, John H. Tweedy, Hans Crocker, Alex'r Mitchell, Levi Blossom, James Bonnell, John E. Cramer, Silas Griffith, Elisha W. Edgerton, Jacob F. Merritt, Benjamin Merritt, Matthew F. Merritt, Erastus Fairbanks, Thadeus Fairbanks, Joseph P. Fairbanks, Horace Fairbanks, Oakley Beach, Menzies R. Case, Howard R. Harrison, Wm. H. Cary, Josiah Oaks, Samuel E. Howard, Henry Sanger, Chas. W. N. Rogers, David W. Catlin, Lorenzo Snow, Elisha Porter, John A. Blanchard, James C. Converse, Royal S. Wells, Wm. H. Handing, Joseph H. Gray, Edmund W. Converse, Henry M. Holbrook, Joseph R. Carter, John F. Holbrook, Alfred Edwards, Geo. P. Lord, Richard C. Edwards, Isaac Danforth, Wm. Sias, James H. Danforth, Chas. J. Davis, Wm. McCully, Thos. Wrightmore, Fred. Lorentz, Henry Sterling, Jacob Painter, Griswold E. Warner, John H. Martin, Fred. Mayo, Ellsworth Cheeseborough, Thos. G. Stearns, Ezra M. Kingsley, Calvin W. How, Yates Ashley, Geo. Willard, Stephen B. Wells, Ralph Clark, Frank. Work, Samuel McLean, Rynier Vechte, Geo. R. Bergh, Lervy M. Whiley, Hugh R. Banks, Henry Van Dyke, Wm. C. Lane, Freeman Allen, Nathaniel Harris, John C. Potter, Henry Loring, Geo. A. Fiske, John Gage, Jonathan C. Meeker, Jacob Herbert, Wm. P. Young, Christian Johnson, and Francis Plankitt. Decree of sale dated October 4, 1851, conveying among other pieces lot 6, in block 3; lot 2, in block 6; lots 1, 7, 8, 9, 10, 11, and 12, in block 9; lot 6, in block 10; lot 12, in block 13; lot 6, in block 21; lots 1 and 12, in block 23; lots 6 and 7, in block 25; lots 2, 3, and 12, in block 26; lots 1 and 6, in block 27; lots 6 and 7, in block 31; and lot 9, in block 32, in Milwaukee proper, in the fifth ward. 2 witnesses.
Vol. H of deeds, page 154.	James Sanderson and wife to Daniel R. Landon.	June 12, 1841, conveying among other pieces lot 6, in block 10, and lot 12, in block 26, in Milwaukee proper. Warranty. 2 witnesses.
Vol. H of deeds, page 113.	James Sanderson and wife to David R. Landon.	June 1, 1841, conveying lots 2 and 3, in block 26, in Milwaukee proper. Warranty. 2 witnesses.
Vol. L of deeds, page 231.	Dan. R. Landon to Alanson Sweet.	December 21, 1843, conveying among other pieces lot 6, in block 10,

Recorded Dec. 21, 1843.		and lots 2, 3, and 12, in block 26, in Milwaukee proper. Warranty. 2 witnesses.
Vol. R of deeds, page 21. Recorded March 7, 1846.	Daniel R. Landon to James Sanderson.	June 11, 1841, conveying lots 2 and 3, in block 26, in Milwaukee proper. Warranty. 2 witnesses.

It is stipulated that the foregoing abstract shall be received in evidence with like effect as if copies of the records to which reference is made therein were here offered and produced, with the interlineations therein as to the defective acknowledgment in the first deed from James Sanderson to Alanson Sweet, of date Sept. 25, 1835.

D. A. J. UPHAM,
Solr. for Deft.

Exhibit B.

OFFICE OF THE CLERK OF THE BOARD OF SUPERVISORS,
Milwaukee County, Milwaukee, June 20, 1856.

STATE OF WISCONSIN,
County of Milwaukee, ss:

I hereby certify that no taxes on lot six (6), block three (3); lot No. two (2), block six (6); lots No. one (1), seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. nine (9); lot No. six (6), in block No. ten (10); lot No. twelve (12), in block No. thirteen (13); lot No. six (6), in block No. twenty-one (21); lot No. one (1), in block No. twenty-three (23); lot No. twelve (12), in block No. twenty-three (23); lots six (6) and seven (7), in block No. twenty-five (25); lots No. two (2), three (3), and twelve (12), in block No. twenty-six (26); lots one (1) and six (6), in block No. twenty-seven (27); lots No. six (6) and seven (7), in block No. thirty-one (31), and lot No. nine (9), in block No. thirty-two (32), in Milwaukee proper, in the fifth ward of the city of Milwaukee, charged on the records in my office, remain unpaid for the year A. D. 1853.

In testimony whereof, I have hereunto set my hand, and affixed the supervisor's seal, this twentieth day of June, A. D. 1856.
[SEAL.]

A. BADE,
Clerk Board Supervisors of Milwaukee Co., Wisconsin.
By C. F. KASTEN, *Deputy.*

Exhibit C.

OFFICE OF THE CLERK OF THE BOARD OF SUPERVISORS,
Milwaukee County, Milwaukee, June 20, 1856.

STATE OF WISCONSIN,
Milwaukee County, ss:

I hereby certify that no taxes on lot six (6), in block No. three (3); lot No. two (2), in block No. six (6); lots No. seven (7), eight (8), and nine (9), in block No. nine (9); lot No. twelve (12), in block No. thirteen (13); lot No. six (6), in block No. twenty-seven (27); lot nine (9), in block thirty-two (32), and lot No. seven (7), in block No. thirty-one (31), in Milwaukee proper, in the fifth ward of the city of Milwaukee, charged on the records in my office, remain unpaid for the year A. D. 1852.

In testimony whereof, I have hereunto set my hand, and affixed the supervisor's seal, this twentieth day of June, A. D. 1856.

[SEAL.]

A. BADE,
Clerk Board of Supervisors, Milwaukee Co., Wisconsin.
By C. F. KASTEN, *Deputy.*

Exhibit D.

OFFICE OF THE CLERK OF THE BOARD OF SUPERVISORS,
Milwaukee County, Milwaukee, June 20, 1856.

STATE OF WISCONSIN,
County of Milwaukee, ss:

I hereby certify that no taxes on lot No. two (2), in block No. six (6), in Milwaukee proper, in the fifth ward of the city of Milwaukee, charged on the records in my office, remain unpaid for the year A. D. 1854; and also that the treasurer's certificates issued for said year 1854 on the following named lots, to wit: lot No. six (6), in block No. three (3); lot No. one (1), in block No. twenty-three (23), and lot No. six (6), in block No. thirty-one (31), in Milwaukee proper, in the fifth ward of the city of Milwaukee, were issued to Messrs. Brown & Ogden, as appears from record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the supervisor's seal this twentieth day of June, A. D. 1856.

[SEAL.]

A. BADE,
Clerk Board of Supervisors of Mil. Co.
By C. F. KASTEN, *Deputy.*

Exhibit E.

CITY TREASURER'S OFFICE,
Milwaukee, June 17, 1856.

I hereby certify that the city taxes, excepting therefrom the special taxes, and the taxes for street commissioner certificates, have been paid on the several lots situated in Milwaukee proper, in the fifth ward of the city of Milwaukee, for the several years as hereinafter stated, to wit: The general city taxes of eighteen hundred and fifty-four, assessed on the following lots: lot No. six (6), in block No. three (3); lot No. two (2), in block No. six (6); lot No. one (1), in block No. twenty-three (23); lot No. six (6), in block No. thirty-one (31); on which lots all the city taxes for 1854 have been paid, except the taxes for street commissioner's certificates.

The general city taxes of eighteen hundred and fifty-three, assessed on the following described lots: lot No. six, in block No. three (3); lot No. two (2), in block No. six (6); lots No. one (1), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), in block No. nine (9); lot No. six (6), in block No. ten (10); lot No. twelve (12), in block No. thirteen (13); lot No. six (6), in block No. twenty-one (21); lot No. one (1), in block No. twenty-three (23); lot No. twelve (12), in block No. twenty-three (23); lots No. six (6) and seven (7), in block No. twenty-five (25); lots No. two (2), three (3), and twelve (12), in block No. twenty-six (26); lots No. one (1) and six (6), in block No. twenty-seven (27); lots No. six (6) and seven (7), in block No. thirty-one (31); and lot No. nine, in block No. thirty-two (32); on which lots all the city taxes for the year 1853 have been paid, except the taxes for street commissioner's certificates.

The general city taxes of eighteen hundred and fifty-two (1852), assessed on the following lots: lot No. six (6), in block No. three (3); lot No. two (2), in block No. six (6); lots No. seven (7), eight (8), and nine (9), in block No. nine (9); lot No. twelve (12), in block No. thirteen (13); lot No. six (6), in block No. twenty-seven (27); lot No. seven (7), in block No. thirty-one (31); and lot No. nine (9), in block No. thirty-two (32); on which lots all the city taxes for the year 1852 have been paid, except the taxes for street commissioner certificates.

The State, county, school, and city taxes of eighteen hundred and fifty-one, assessed on the following lots: lot No. six (6), in block No. three (3); lot No. eight (8), in block No. nine (9); lot No. twelve (12), in block No. thirteen (13); lots No. one (1) and twelve (12), in block No. twenty-three (23); lots No. six (6) and seven (7), in block No. thirty-one (31); and lot No. nine (9), in block No. thirty-two (32); excepting these from all the special taxes.

The general city taxes levied under an act entitled "An act to

authorize the assessment and collection of taxes in the city of Milwaukee," approved January 24th, 1851, on the following lots: lot No. two (2), in block No. six (6); lot No. eight (8), in block No. nine (9); lot No. six (6), in block No. twenty-one (21); and lot No. seven (7), in block No. thirty-one (31); excepting these from all the special taxes.

In testimony whereof, I have hereunto set my name.

HERMAN SCHWARTING,
City Treasurer.

Exhibit F.

DISTRICT COURT,
Milwaukee County, ss:

JAMES SANDERSON
vs.
TIMOTHY HARRIS et al. } In partition of June term, 1853.

We, Sylvester W. Dunbar, George S. West, and Lucius J. Barber, commissioners duly appointed by the Hon. William C. Frazier, judge of the third judicial district of the Territory of Wisconsin, to make division and partition among the several owners, according to their respective rights and interests, quality and quantity considered, in the above entitled cause, of the following pieces of land, viz: lot number four, of section number thirty-two, in township number seven, north of range No. twenty-two east, in said county of Milwaukee, containing sixty-five and 90-100 acres, as per government survey, do hereby certify and make return to the said court of our doings in the premises; that we severally took and subscribed the oath, in due form of law, honestly and impartially to execute the trust reposed in us as commissioners for making partition of the lands, tenements, or hereditaments, as directed by the said court, and duly filed the same in the office of the said clerk; that we then went on to said land, and carefully examined the same, with a view to the quality and quantity of land of right appertaining to the owners thereof according to their several and respective interests; and we made a true and accurate plat of the same from a survey of the land, and therein designated the parts and parcels set off and apportioned to each of the said owners mentioned in the said order of court, and the value of each of said lots—quality and quantity considered; that we divided the said lot into two hundred and forty-six parts or lots, as by the said plat will fully appear, which said plat is hereunto attached; that we set off and allotted to James Sanderson and his legal representatives, as his part and portion, quantity and quality considered, sixty-one of said parts or lots, viz: lots numbered three, four, and five, in block No. four; lots one and two, in block No. five; lots No. five and six, in block No. six;

lots three and four, in block No. seven; lots number four, five, six, eight, and nine, in block No. ten; lots one, two, three, four, and ten, in block No. twelve; lots four, five, six, seven, eight, and nine, in block No. fourteen; lots twenty-four and twenty-five, in block No. fifteen; lots seven and nine, in block No. twenty-one; lots No. four, five, six, seven, eight, and nine, in block No. twenty-two; lots No. four, five, six, seven, eight, nine, ten, eleven, and twelve, in block No. twenty-four; lots two, three, ten, eleven, and twelve, in block No. twenty-six; lots No. four, five, six, seven, eight, and nine, in block No. twenty-eight; lots No. one, two, three, ten, eleven, and twelve, in block No. thirty, as his full share and portion of the said piece of land so divided by us, as by reference to the said plat may more fully appear. That we set off and allotted to James McMartin and Peter McMartin, jointly, and to their legal representatives, as their part and portion, quality and quantity considered, thirty-one of said lots or parcels, viz: lot numbered two, in block No. four; lot No. six, in block No. five; lots No. five and six, in block No. seven; lot No. three, in block nine; lots No. seven, ten, eleven, and twelve, in block No. ten; lots five, six, eleven, and twelve, in block twelve; lots No. ten, eleven, and twelve, in block No. fourteen; lot No. twenty-three, in block No. fifteen; lot No. ten, in block No. twenty-one; lots No. one, two, and three, in block No. twenty-two; lots No. one, four, five, and six, in block No. twenty-six; lots No. one, two, and three, in block No. twenty-eight; lots seven, eight, and nine, in block No. thirty, as their full share and portion of said land so divided by us, as by reference to the said plat hereunto attached will more fully appear. That we set off and allotted to James D. Doty and his legal representatives, as his part and portion, quality and quantity considered, thirty-one of said lots or parcels of land, to wit: lots No. four and five, in block No. three; lot No. six, in block No. four; lot No. two, in block No. seven; lot No. one, in block No. eight; lots four, five, and six, in block No. nine; lots ten, eleven, and twelve, in block No. eleven; lots four, five, and six, in block No. thirteen; lots No. two and three, in block No. twenty-one; lots No. four, five, and six, in block No. twenty-three; lots No. one, two, and three, in block No. twenty-five; lots No. ten, eleven, and twelve, in block No. twenty-seven; lots No. one, two, three, ten, eleven, and twelve, in block No. thirty-one, as his full share and portion of the said land so divided by us, as by reference to the said plat hereunto attached will fully appear. That we set off and allotted to Timothy Harris and his legal representatives, as his part and portion, quality and quantity considered, thirty of said lots or parcels, viz: lot No. one, in block No. four; lot No. one, in block No. six; lots No. two and three, in block No. eight; lots one, two, and three, in block No. ten; lots seven, eight, and nine, in block No. twelve; lots one, two, and three, in block No. fourteen; lot No. eight, in block No. twenty-one; lots ten, eleven, and

twelve, in block No. twenty-two; lots No. one, two, and three, in block No. twenty-four; lots No. seven, eight, and nine, in block No. twenty-six; lots ten, eleven, and twelve, in block twenty-eight; lots No. four, five, and six, in block thirty; lot No. ten, in block No. thirty-two, as his full share and portion of said land, as by reference to said plat will appear. That we set off and allotted to Alanson Sweet and others unknown, and his or their legal representatives, for his or their part or portion, quality and quantity considered, ninety-three of said lots or parcels, viz: lots No. one, two, three, and six, in block No. three; lots No. three, four, and five, in block No. five; lots No. two, three, and four, in block No. six; lot one, in block No. seven; lots four, five, and six, in block No. eight; lots one, two, seven, eight, nine, ten, eleven, and twelve, in block No. nine; lots one, two, three, four, five, six, seven, eight, and nine, in block No. eleven; lots No. one, two, three, seven, eight, nine, ten, eleven, and twelve, in block No. thirteen; lots No. twenty-two, twenty-six, and twenty-seven, in block No. fifteen; lots No. one, four, five, and six, in block No. twenty-one; lots No. one, two, three, seven, eight, nine, ten, eleven, and twelve, in block No. twenty-three; lots No. four, five, six, seven, eight, nine, ten, eleven, and twelve, in block No. twenty-five; lots No. one, two, three, four, five, six, seven, eight, and nine, in block No. twenty-seven; the whole of block No. twenty-nine; lots No. four, five, six, seven, eight, and nine, in block No. thirty-one; lot No. nine, in block No. thirty-two, as his or their full share and portion of the said land so divided by us, as by reference to said plat attached may more fully appear, with the appraised value of each lot thereon.

In witness whereof, we, the above commissioners, have hereunto set our hands and affixed our seals this twenty-third day of June, A. D. one thousand eight hundred and thirty-eight.

SYLVESTER W. DUNBAR, [SEAL.]
GEO. S. WEST, [SEAL.]
LUCIUS J. BARBER. [SEAL.]

Signed, sealed, and delivered
in presence of—
D. A. J. UPHAM,
C. HANLEY.

TERRITORY OF WISCONSIN,
Milwaukee County, ss:

On the 23d day of June, A. D. 1838, came Lucius J. Barber, Sylvester W. Dunbar, and George S. West, and severally acknowledged the execution of the annexed instrument for the uses and purposes therein mentioned.

CYRUS HANLEY,
Notary Public.

STATE OF WISCONSIN,
Circuit Court, Milwaukee County, ss:

I, Matthew Keenan, clerk of said court, hereby certify that I have compared the foregoing with the report of the commissioners, and the plat of lot No. 4, sec. No. 32, in township No. 7 north, of range 22 east, as divided by commissioners, in a cause in partition, in district court, county of Milwaukee, Territory of Wisconsin, wherein James Sanderson is complainant, and Timothy Harris and others are defendants, that it is a correct transcript of such report and plat, and the whole thereof, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed [SEAL.] the seal of said court this 11th day of June, A. D. 1856.

MATTHEW KEENAN, *Clerk.*

(Plat referred to in exhibit F. See page 55.)

Defendant's Testimony.

And on the part of the defendants, the following was admitted as evidence at the hearing of this cause.

Deposition of Allen Johnson.

DISTRICT COURT OF THE UNITED STATES,
For the District of Wisconsin.

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE and FERDINAND KUEHN. } In chancery.

Deposition of witnesses taken by consent of parties, on behalf of the defendants, before Winfield Smith, one of the masters and commissioners of this court, at his office, in the city of Milwaukee, in said district, on the ninth day of June, eighteen hundred and fifty-six.

At which time and place appeared Mr. Brown, of counsel for the complainant, Mr. Upham, of counsel for the defendant, and the witnesses.

The witness, Allen Johnson, being duly sworn, deposes and says:

I had a contract with the city of Milwaukee for grading certain streets in the fifth ward of that city, in the year 1849. Under that contract I think I graded Rail Road street from Chicago to Clinton street, and Clinton street from Rail Road street to Washington street; some was cutting, and some was filling. I graded the street in front of lot seven, in block thirty-one, in Milwaukee proper. That was cutting, I think. I graded the street in front

of lot twelve, in block thirteen; that is Clinton street, on the side of that lot. I also graded the street on the side of lot nine, in block thirty-two. Both of these lots in Milwaukee proper. The work was filling on these two lots. Some of the owners of the lots mentioned in the contract filled the street in front of their lots that I know of.

Cross-examined: I had a contract from the city which was written.

(The complainant's counsel objects to all evidence as to the contents of the contract, until the contract is produced.)

I received for the work done the orders at the city clerk's office. I have forgotten what kind of orders they were. Richard M. Sweet was one of the aldermen of the fifth ward at that time; I could not say positively who the others were. I think I got the contract as the lowest bidder. I put in a bid myself, I am very sure. The work was finished during the summer. I don't recollect the day. I think the contract was received in the spring, and the work was done during the same season. It was done, I think I am sure, within the time specified in the contract. I paid personal attention to it. I had the oversight of it. We graded the streets up to the stakes pointed out by Mr. Trowbridge. I don't recollect the quantities of work done opposite each lot. We did all the work called for by the contract.

ALLEN JOHNSON.

Deposition of Wm. S. Trowbridge.

The witness, William S. Trowbridge, being duly sworn, says as follows:

I was engineer of the fifth ward in 1849. I recollect that Allen Johnson had a contract with the city to do some grading there. He graded Railroad street from Chicago (now called Monroe) street to Clinton st., then on Clinton street, from Railroad street to Washington street. The street in front of lot seven, in block thirty-one, in Milwaukee proper, was graded by him, being Railroad street, Clinton street in front of lot nine, in block thirty-two, and in front of lot twelve, in block thirteen, all in Milwaukee proper, was graded by him. I don't recollect that the owner of any of the lots on those streets did any of the work on the streets; my recollection is, that Mr. Johnson did the whole work. I, as ward engineer, superintended the work for the city. Mr. Johnson completed the work according to my directions. I made an estimate of the work done opposite each lot. The estimate was made of the number of cubic yards of filling or cutting up to the middle of the street in front of each lot, and of the cost of it. I made, about the first of December, 1848, an estimate of the amount and cost (at contract prices) of all the work done in that ward, on each lot and in front of each lot, and handed it to the aldermen of the ward. I made

that estimate charging to each lot the amount of work done in front of each lot up to the middle of the street. I believe Johnson did the work on his contract within the time limited in the contract. He began immediately after getting the contract. I was acquainted with property in that ward and the value of it at that time. That work increased the value of the property on those streets as much as the cost of the streets.

Cross examined: I don't recollect the amount of work done, or its cost opposite any one lot. I think I would have given a hundred dollars for any one of those lots after that work was done. I was not familiar with the prices of those lots in 1848. I don't know that I can fix the value of them in 1851. Property in the city of Milwaukee was unsaleable in 1851—there was not a demand for it. The lots are fifty by a hundred and fifty feet when there is no alley; they are fifty by a hundred and forty feet when there is an alley. These lots are fifty feet by a hundred and forty, except lot nine, in block thirty-two, which is a hundred and forty feet front on Clinton street, and about sixty feet front on the other street. I get my knowledge of these dimensions from the plats on record. The lots in blocks twenty-nine, thirty, and thirty-one front north and south on Railroad and Madison streets; four lots in each block front on other streets; also on Abert, Duane, Kent, and Clinton streets—now called Greenbush, Hanover, Reed, and Clinton streets. The basis on which I made the estimates was the amount of work done in front of each lot, so that the charge would vary on different lots. My recollection of it is, that the lots on Railroad street paid only to the centre of the street—the owner of the property on the other side paying for the work on the other side of the street. I am not certain of it. I am now city surveyor. I think I made the estimate for the south half of Railroad street for another person.

WILLIAM S. TROWBRIDGE.

DISTRICT OF WISCONSIN, ss:

I, Winfield Smith, one of the masters and commissioners of the district court of the United States for said district, do hereby certify that at the time and place named in the caption of the foregoing depositions, the counsel and the witnessess therein named appeared before me, and the witnesses above named were severally sworn by me, and their answers taken down by me in their presence and read to them, and were by them severally subscribed as above.

Witness my hand, at Milwaukee, in said district, on this 9th day of June, eighteen hundred and fifty-six.

WINFIELD SMITH,
Master and Commissioner.

Exhibit A. Printer's Affidavit.

Resolved, That the aldermen of the fifth ward are hereby in-

structed to cause Rail Road street from Chicago street to Clinton street, and Clinton street from Rail Road street to Washington, to be graded, in accordance with survey made by William S. Trowbridge, engineer. And the owners or occupants of lots fronting on the streets above mentioned are hereby notified that the work of grading must be completed within thirty days from the date hereof; and in case the work is not completed within the time specified, the aldermen of the fifth ward are hereby directed to let the same to the lowest responsible bidder; payment to be made out of the special tax fund of the fifth ward, in accordance with special act, approved August 19, 1848, for grading streets in fifth ward. The clerk is hereby instructed to cause the above to be published in the daily papers one *work*.

Adopted April 19, 1849.

P. B. HILL,
City Clerk pro tem.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Rufus King, being duly sworn, on oath depose and say, that I am and was, at the date of the annexed notice, one of the publishers and proprietors of the Milwaukee Sentinel and Gazette, a newspaper printed daily in the city and county of Milwaukee aforesaid, and that a copy of the annexed notice was published in said paper daily for one week, commencing April 23, 1849, and ending May 1, 1849.

RUFUS KING.

Subscribed and sworn to this 6th day of June, A. D. 1856, before me.

A. H. BURDICK,
Notary Public, Milwaukee Co.

Notice to Tax Payers.

CITY TREASURER'S OFFICE,
Milwaukee, April 3, 1851.

Notice is hereby given to all interested, that the tax lists of the 1st, 2d, 3d, 4th, and 5th wards of the city of Milwaukee, made out in accordance with an act entitled "An act to authorize the assessments and collection of taxes in the city of Milwaukee," approved January 24, 1851, have been committed to me for the purpose of collecting the taxes thereon, and I will receive payment of taxes at my office until the first day of May next. Notice is further hereby given, that on the fifth day of May next, at 10 o'clock a. m., at the court-house, in the city of Milwaukee, I will commence selling all lots and lands in said tax lists contained upon which the taxes

remain unpaid at that time, or so much thereof as will pay and satisfy all taxes which may be assessed thereon, together with all costs and liabilities which shall accrue, according to law, by advertisement and sale; and I shall continue the sale from day to day (Sunday excepted) until all lots, parts of lots, or tracts of land, on which the taxes remain unpaid, shall have been sold. And notice is further hereby given, that I shall continue to receive at my office the taxes levied in this city for State, county, and school purposes, for the year 1850, until the 1st Monday of May next. "And in accordance with an act to extend the time for collecting and making return of the taxes levied in the city of Milwaukee for State, county, and school purposes, for the year 1850," approved January 30, 1851, I shall, on the first Monday of May next, at 10 o'clock a. m., at the court-house, in the city of Milwaukee, commence selling all lots and lands contained in the tax lists for State, county, and school tax for 1850, on which taxes remain unpaid at that time, or so much thereof as will pay and satisfy all taxes which may be assessed thereon, together with all costs and liabilities which shall accrue, according to law, by advertisement and sale; and I shall continue said sale from day to day (Sundays excepted) until all lots, or parts of lots, or tracts of land, on which said State, county, and school taxes remain unpaid, shall have been sold.

CHARLES GEISBERG,
Treasurer of the City of Milwaukee. Office in Kneeland's Brick Block; rooms No. 4; East Water Street.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Rufus King, being duly sworn, on oath depose and say, that I am and was, at the date of the annexed notice, one of the proprietors and publishers of the Milwaukee Daily Sentinel and Gazette, a newspaper published in the said city and county of Milwaukee, and that a copy of the annexed notice was published daily in said newspaper for one month, commencing April 4, 1851, and ending May 4, 1851.

RUFUS KING.

Subscribed and sworn to this 6th day of June, A. D. 1856, before me.

A. H. BURDICK,
Notary Public, Milwaukee Co.

Abstract from the assessment roll for the fifth ward of the city of Milwaukee, made under the special act of the legislature, approved January 24, 1851, with a copy of the assessor's affidavit and certificate attached thereto.

Milwaukee Proper.

Names of owners.	Lot.	Block.	Value of lot.	Value of improvement.	Total.
A. Sweet	12	13	$40		$40
	7	31	30		30
Jos. Sanderson	9	32	35		35

STATE OF WISCONSIN,
Milwaukee County, ss:

Henry Shew, John Pierce, and Francis Newkirk, assessors in and for the fifth ward of the city of Milwaukee, county aforesaid, being duly sworn, severally depose and say, that they have set down in the above assessment roll all the real estate situate in the fifth ward of the city of Milwaukee, in the county of Milwaukee aforesaid, liable to be taxed, according to their best information, and that they have estimated the same at what they believe to be the true cash value thereof; that the said assessment roll contains a true statement of the aggregate valuation of the taxable personal property and estate of each and every person named in said roll, as nearly as they could ascertain and determine the same, and that they have estimated the same at the true cash value, according to their best information and belief.

(Signed) HENRY SHEW,
JOHN PIERCE,
FRANCIS NEWKIRK,
Assessors Fifth Ward.

Subscribed and sworn before me, this 1st day of March, 1851.
(Signed) D. A. J. UPHAM,
Mayor of Mil.

STATE OF WISCONSIN,
City and County of Milwaukee.

The undersigned, clerk of the common council for the city of Milwaukee, hereby certifies that the above is a true copy of all entries in the assessment roll for the fifth ward of the city of Milwaukee, under the special act of the legislature of January 24 and March 1, 1851, relating to the above-named lots; and annexed also is a true copy of the affidavit and certificate of the assessors attached to said assessment roll now in my office.

Given under my hand and the seal of said city, at Milwaukee, this 6th day of June, A. D. 1856.

R. WHITEHEAD,
[SEAL.] *City Clerk.*

Abstract from the journal and records of the proceedings of the

common council of the city of Milwaukee, commencing February 8th, 1851, and ending March 24th, 1851.

1851, February 8. Ald. Lynde moved that the rules be suspended, and that the subject of appointing assessors be taken up, which having been agreed to, he thereupon offered the following resolution:

Resolved, That the following persons be and they are hereby appointed assessors for the various wards of this city, under the act entitled "An act to authorize the assessment and collection of taxes in the city of Milwaukee," approved January 24th, 1851, viz:

First ward.—E. B. Dickerman, James Johnson, and Herman Upmann.

Second ward.—Augustus Grenlich, J. A. Lapham, and William Reinhard.

Third ward.—William A. Prentiss, John Shartell, and Thomas Burns.

Fourth ward.—Argulus W. Starks, John H. Tesch, and Ira E. Gordall.

Fifth ward.—John Pierce, Henry Shew, and Francis Newkirk, which was adopted by the following vote: Ayes—Aldermen Lynde, Juneau, Ludington, Boiselier, Hoover, McGarry, Button, Rogers, Wedemeyer, Page, and Hayden—11.

Noes—None.

On motion of alderman Lynde, the clerk was ordered to notify the several assessors of their appointment through the marshal in writing.

1851, February 13. Alderman McGarry presented the oaths of assessors of the various wards, which were ordered placed on file.

1851, March 1st. Alderman Kneeland offered the following resolution:

Resolved, That a committee consisting of one from each ward be appointed by the mayor to recommend an equalization to this board of the assessments of the city, with power to contract with one or more persons for the completion of the tax lists as speedily as possible, which was adopted, and the chair appointed aldermen Button, Rogers, Hoover, Juneau, and Page such committee.

1851, March 8. Alderman Button, from the committee on equalization, submitted the following report:

To the mayor and aldermen of the city of Milwaukee: The select committee appointed to examine the various assessment rolls and to equalize the same, beg leave to report, that they have attended to the duty assigned them, and would recommend the adoption of the following sums, they being in accordance with the books returned by the assessors.

First ward	$545,550
Second ward	378,180

Third ward	539,175
Fourth ward	317,665
Fifth ward	215,096
	$1,995,616

Your committee would further report, that in accordance with the resolution under which they were appointed, they have procured the services of Messrs. Thos. Lorengen and Ferdinand Kuehn, to complete the city tax lists, for the sum of two hundred and forty-five dollars; the same to be completed by the time specified by law, and to the satisfaction of this board. All of which is respectfully submitted.

Milwaukee, March 8, 1851.

E. BUTTON, *Chairman.*

Which report was adopted by the following vote: Ayes—Aldermen Lynde, Juneau, Ludington, Boselier, Hoover, McGarry, Button, Kneeland, Rogers, Wedemeyer, and Page—11. Noes—none.

1851, March 24. Alderman Walker presented the following resolutions, schedules, and appendages:

Resolved, That a special tax be levied on all lots lying in the fifth ward, in accordance with the following schedule, as made out by the engineer, the amounts to be placed in the tax list for collection against the lots corresponding in number with the lots in said schedule; also, that a special side-walk tax be and the same is hereby levied on all lots in the schedule referred to above, for the fifth ward, to the amount said side-walks cost, and as set forth in the schedule attached hereto for 1849.

The following are all the entries relating to the following lots in said schedule:

Milwaukee proper.

Block.	Lot.	Side-walk tax.	Special tax.	Total.
13	12		$67 95	$67 95
31	7		160 73	160 73
32	9		95 09	95 09

I certify that this is a true copy of all special taxes charged against lots in the fifth ward of the city of Milwaukee, in the tax books in the city treasurer's office for the year 1849, except such taxes as have been remitted.

FREDERICK SCHUMACHER,
Fifth Ward Engineer.

We hereby certify that the foregoing schedule of the engineer is a true statement of the amount due on the lots specified for spe-

cial street, sidewalk, dredging and docking purposes, and for the abatement of nuisances in the fifth ward of the city of Milwaukee, and we hereby levy accordingly upon the different lots, in the said schedule mentioned, the respective sums set opposite their description, for such purposes.

GEO. H. WALKER,
MICHAEL PAGE,
Aldermen of the Fifth Ward.

Which were adopted by the following vote: Ayes—Aldermen Juneau, Hubschmann, Hoover, Button, Rogers, Wedemeyer, Walker, and Page—8. Noes—none.

STATE OF WISCONSIN,
City and County of Milwaukee.

The undersigned, clerk of the common council for the city of Milwaukee, hereby certifies that the above is a true and correct copy of the journal and records of the proceedings of the common council now in his custody, the different proceedings being under the date as above set forth, and being full entries as to the subject matter to which they relate.

Given under my hand and the seal of said city of Milwaukee, [SEAL.] this 6th day of June, A. D. 1856.

R. WHITEHEAD,
City Clerk.

Abstract from the tax list for the fifth ward of the city of Milwaukee, in the treasurer's office of said city, collected under the special acts of January 29 and March 1, 1851, with the warrant of the mayor for the payment of the same.

Milwaukee proper.

	Value of lot.	Gen. taxes.	Special tax.	Total.
Lot 12, block 13	$90	2 48	67 95	70 38
Lot 7, " 31	30	1 80	160 73	162 55
Lot 9, " 32	35	2 10	95 09	97 22

The city of Milwaukee to Charles Geisberg, treasurer of the city of Milwaukee, in the county of Milwaukee, and State of Wisconsin:

In pursuance of an act entitled "An act to authorize the assessment and collection of taxes in the city of Milwaukee," approved January 24, 1851, and an act supplemental thereto, approved March 1, 1851, you are hereby commanded to collect from each of the persons and corporations named in the annexed assessment roll, and of the owners of the real estate described therein, the taxes set down in such roll opposite to their respective names, and

to the several parcels and lots of land therein described; and in case any person or corporation, upon whom any such sum or tax is imposed, shall refuse or neglect to pay the same, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed, and the same so collected retain in your hands, subject to the order of said city.

Given under my hand and the seal of said city, this third day of April, A. D. 1851.

D. A. J. UPHAM, *Mayor.*

Attest:

ALFRED JOHNSON, [CITY SEAL.]
City Clerk.

STATE OF WISCONSIN,
City and County of Milwaukee.

I, Hermann Schwarting, treasurer of the city of Milwaukee, do hereby certify that the above is a true copy and abstract of the valuation, and all the taxes assessed against the above-named lots in the assessment roll or tax list for the collection of taxes in the fifth ward of said city, under the special acts of January and March, 1851; and above also is a true copy of the mayor's warrant for the collection of the same, the original now being in my office.

Milwaukee, June 4, 1856.

HERMAN SCHWARTING,
City Treasurer.

Abstract from the sales book for the fifth ward of the city of Milwaukee, in the treasurer's office of said city, of sales for city taxes made under the acts of January 24 and March 1, 1851, with the certificate of the city treasurer thereon.

Milwaukee proper.

	Block.	Names of purchasers.	Date.	Amount.
			1851.	
Lot 12	13	Chas. Giesberg, C. T.	May 31	$70 45
" 7	31	" "	" "	162 63
" 9	32	" "	May 31	97 29

1855, Nov. 9. Gen. tax redeemed by Brown & Ogden for Dean Richmond. Gen. tax $1 90.

STATE OF WISCONSIN,
County of Milwaukee, ss:

I, the undersigned, treasurer of the city of Milwaukee, do hereby certify, that in accordance with an act entitled "An act to authorize the assessment and collection of taxes in the city of Milwaukee,"

approved January 24, 1851, and in accordance with the several acts amendatory or supplementary thereto, I have sold for unpaid taxes the herein described lots and tracts or parcels of land, according to law.

Milwaukee, June 2, 1852.

CHARLES GIESBERG,
Treasurer of the City of Milwaukee.

STATE OF WISCONSIN,
City and County of Milwaukee, ss:

I, Herman Schwarting, treasurer of the city of Milwaukee, do hereby certify that the above is an abstract, and contains all the entries relating to the above-named lots in the sales book now in my office, containing the lots and lands sold for city taxes, under the special acts of January 24 and March 1, 1851; and above is also a true copy of the certificate of the then city treasurer attached thereto of said sale.

Milwaukee, June 4, 1856.

HERMAN SCHWARTING,
City Treasurer.

Exhibit B.

Abstract from the journal and records of the proceedings of the common council of the city of Milwaukee, and of the aldermen of the different wards thereof, commending April 19th, 1849, and ending Dec. 3d, 1849.

1849, April 19th. Resolution offered by alderman R. M. Sweet.

Resolved, That the aldermen of the fifth ward are hereby instructed to cause Railroad street from Chicago street to Clinton street, and Clinton street from Railroad street to Washington, to be graded in accordance with a survey made by William S. Trowbridge, engineer; and that the owners or occupants of the lots fronting on the streets above mentioned are hereby notified that the work of grading must be completed within thirty days from the date thereof; and in case the work is not completed within the time specified, the aldermen of the fifth ward are hereby directed to let the same to the lowest responsible bidder—payment to be made out of the special tax fund of the fifth ward, in accordance with a special act approved August 19th, 1848, for grading streets in the fifth ward. The clerk is hereby instructed to cause the above to be published in the daily papers for one week.

Adopted. Ayes—Messrs. R. M. Sweet, Merrill.

Noes.—Shumway.

1849, June 19. The contracts of Allen Johnson, John G. Gebhord, Edwin DeWolf, Hubbell Loomis, John P. Sewell, Warren

Betts, and J. Taylor with the aldermen of the fifth ward were received, approved, and ordered on file.

1849, December 3. Resolution offered by alderman R. M. Sweet.

Resolved, That a special tax be levied on all lots lying in the fifth ward, in accordance with the schedule and estimates marked "C," as made out by the city engineer, and the clerk of this board is hereby instructed to cause the said amounts to be placed in the tax list for the collection for the year 1849, against the lots corresponding in number with lots in said schedule.

Said schedule "C" is entitled below, and among other lots contains the lots below and the following entries as to them, which are all the entries as to these lots.

Schedule "C."

Schedule of lots and tax for grading Rail Road and Clinton streets, in Milwaukee proper, fifth ward.

Lot.	Block.	Yds. filling.	Yds. excavation.	Total.
12	13	283.1		$67 95
7	31		902.9	160 73
9	32	403.1		95 09

All the following tax resolutions were adopted. Ayes—Aldermen Ehlebrecht, A. Sweet, Nugent, Grenlich, Lapham, Hoover, Webb, Stupinski, Hayden, Hatton, Williams, Wedemeyer, R. M. Sweet, J. C. Smith, J. M. Smith—15.

Noes—None.

STATE OF WISCONSIN,
City and County of Milwaukee, ss:

The undersigned, clerk of the common council of the city of Milwaukee, hereby certifies that the above is a true copy of the entries in the journal and records of the proceedings of the common council of said city now in his custody. That the dates of the entries are as above set forth at different times during the year 1849, and are full and entire as they relate to the subject matter.

Given under my hand, and the seal of said city, this 7th day of [L. S.] June, A. D. 1856.

R. WHITEHEAD,
City Clerk.

And now, at this same term of November, A. D. 1856, and on the second day thereof, to wit, on the eleventh day of November, A. D. 1856, the following proceedings were had, to wit:

Decree.

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE and Ferdinand Kuehn. } In equity.

This day came the parties by their counsel, and on consideration of the pleadings, proofs, and arguments of counsel, it is ordered and decreed by the court, and this court doth now here order, adjudge, and decree, that the complainant's bill of complaint be and hereby is dismissed, but without prejudice. And it is further ordered, that the complainants pay the costs to be taxed, and in default thereof, that an execution be issued against him for the same.

A. G. MILLER.

And afterwards, to wit, on the fourth day of said term, to wit, on the thirteenth day of November, A. D. 1856, the following proceedings were had, to wit:

Appeal allowed.

DEAN RICHMOND
vs.
THE CITY OF MILWAUKEE and Ferdinand Kuehn. } In equity.

This day came the complainant, and presented his petition for an appeal to the Supreme Court of the United States. On consideration whereof, it is ordered by the court, that an appeal be and is hereby allowed, and that the said complainant give bond with surety, to be approved by the court, in the penalty of five hundred dollars.

And afterwards, to wit, on the fourteenth day of said month of November, A. D. 1856, came the said complainant, and filed his appeal bond, which said bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that we, James S. Brown and Alexander Mitchell, are held and firmly bound unto the city of Milwaukee and Ferdinand Kuehn and their assigns in the sum of five hundred dollars, to the payment of which, well and truly to be made to the said city of Milwaukee and Ferdinand Kuehn or their assigns, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this fourteenth day of November, A. D. 1856.

The condition of this obligation is such, that whereas Dean Richmond has obtained an order from the district court of the United States for the district of Wisconsin, allowing him an appeal from a final decree in equity in said court in favor of said city of Milwaukee and Ferdinand Kuehn, as defendants, and against said Dean Richmond, as complainant, on the thirteenth day of November, A. D. 1856, to the Supreme Court of the United States, upon the execution of this bond. Now, the condition of the above obligation is such, that if the above bounden Brown and Mitchell shall well and truly pay to the said city of Milwaukee and Ferdinand Kuehn, defendants in said appeal, all such costs as they may recover against the said Dean Richmond, or said Brown and Mitchell, in case it should be decided that said appeal was wrongfully obtained, or if the decree should not be prosecuted with effect, then this obligation shall be void and of none effect; otherwise, to be and remain in full force and virtue.

JAMES S. BROWN, [SEAL.]
ALX. MITCHELL. [SEAL.]

In presence of
JOHN JOHNSTON.

The within bond approved, November 14, 1856.
UPHAM & GRAHAM,
Solrs. for Deft.

November 14, 1856. Approved by the court.

Certificate.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Benjamin K. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that the foregoing seventy-six pages contain a true transcript of the record in the case in equity, wherein Dean Richmond is complainant, and the City of Milwaukee and Ferdinand Kuehn are defendants, duly compared and examined.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of said court, at Milwaukee, in said district, this sixth day of December, A. D. 1856, and of the independence of the United States the eighty-first. [SEAL.]

B. K. MILLER, *Clerk.*

United States of America to the city of Milwaukee and Ferdinand Kuehn, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington

on the first Monday in December next, pursuant to an appeal filed in the district court of the United States for the district of Wisconsin, wherein Dean Richmond is appellant, and you are appellees, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourteenth day of November, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eighty-first.

A. G. MILLER,
Judge District Court United States, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

Charles C. Cotton, deputy marshal, being duly sworn, deposes and says, that he served the foregoing citation on the 24th day of October, A. D. 1856, by delivering copies thereof to Ferdinand Kuehn and to J. H. Segur, deputy clerk of the city of Milwaukee.

C. C. COTTON,
Dep. U. S. Marshal.

Subscribed and sworn to before me this 6th day of December, A. D. 1856.

B. K. MILLER, *Clerk.*